

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BENJAMIN W. MITCHELL, JR.,

07 Civ. 8268 (PKC)

Plaintiff,

-v-

NOTICE OF MOTION

PRISON HEALTH SERVICES, INC., ROBERT
DE GUZMAN, M.D., Official Capacity, MS.
DAVIS, Nurse, MS. BAPTISTE, RN, Official
Capacity,

Defendants.
-----X

PLEASE TAKE NOTICE that, upon the annexed Declaration of PAUL
STUART HABERMAN, sworn to on the 18th day of July, 2008, along with the Memorandum
of Law and accompanying exhibits, and upon all prior pleadings and proceedings heretofore
had herein, the Defendants will move this Court at United States District Court, Southern
District of New York at 500 Pearl Street, New York, New York, 10007, at a date to be
determined by the Court, for an Order, (A) (i) pursuant to Rule 12 (b) (6) of the Federal Rules
of Civil Procedure, dismissing the Plaintiff's Complaint for failure to state a cause of action
against the Defendants under 42 U.S.C. 1983; or in the alternative, (ii) for summary judgment
pursuant to Federal Rules of Civil Procedure Rule 56, because on this record there are no triable
issues of fact; and granting Defendants such other and further relief as this Court deems just
and proper.

PLEASE TAKE FURTHER NOTICE that, opposition papers, if any, must be
served on the undersigned on or before August 18, 2008.

PLEASE TAKE FURTHER NOTICE that, reply papers, if any, will be served
on or before August 29, 2008.

Dated: New York, New York
July 18, 2008

HEIDELL, PITTONI, MURPHY & BACH, LLP

By: 

PAUL STUART HABERMAN (PH2771)
Trial Counsel for Corporation
Counsel of the City of New York,
Attorneys for Defendants Prison Health Services,
Inc., Roberto DeGuzman, M.D., Ms. Davis, Nurse,
Ms. Baptiste, RN
Office & P.O. Address
99 Park Avenue
New York, New York 10016
(212) 286-8585

TO: Benjamin W. Mitchell, Jr.
07-A-5226
Upstate Correctional Facility
P.O. Box 2001
309 Bare Hill Road
Malone, New York 12953